

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1096 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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VINODRAY M BHATT

Versus

GUJARAT ELECTRICITY BOARD  
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Appearance:

MR KS ACHARYA for Petitioner  
MR NK MAJMUDAR for Respondent No. 1, 2  
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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 08/11/2000

ORAL JUDGEMENT

1. Vinodray M. Bhatt - applicant has filed this revision application challenging the order dated 18th September, 2000 in Civil Misc. Appeal No.45 of 2000 passed below Ex.4 by the 3rd Extra Assistant Judge, Rajkot, wherein the learned Judge has dismissed the said

appeal and confirmed the order passed below Ex.5 in Regular Civil Suit No.1296 of 1999 before Civil Judge (S.D.), Rajkot for declaration and permanent injunction along with the application to obtain ad-interim injunction against the defendant.

2. It was the case of the plaintiff that the plaintiff is serving in Gujarat Electricity Board (G.E.B.), Rajkot. It was the case of the plaintiff that the criminal complaint was lodged against the plaintiff in Lodhika Police Station, under the offence Registration No.90 of 1999. The petitioner averred that to harass him, he has been under suspension and also transferred out of the circle of plaintiff. He has further averred that in connection of the criminal complaint, chargesheet given to the plaintiff on 21st August, 1999 by the defendant. He has further averred that departmental enquiry and criminal case, both cannot be proceed simultaneously.

3. The Court issued summons to the G.E.B. (i.e. original defendant). The defendant appeared through its counsel and filed its written objections at Ex.24 against the application. The defendant has stated that plaintiff has no prima facie case. It is the case of defendant that plaintiff is under suspension and is facing departmental enquiry for misappropriation of money of G.E.B. From the evidence on record, it transpires that in original receipt amount shown more while in duplicate receipt, amount shown less. Therefore, it is clear case of on evidence on record and if the departmental enquiry proceeds against appellant no question to cause prejudice to the defence of appellant.

4. The 3rd Extra Assistant Judge, Rajkot by its judgment and order dated 18th May, 2000 pleased to reject the application of the plaintiff under Order 39, Rule 1 and 2 and section 151 of Civil Procedure Code. On the ground that the plaintiff is miserably failed to prove his prima face case and balance of convenience is also not in favour of the plaintiff and ad-interim relief granted on 3rd November, 1999 was dismissed.

5. Being aggrieved and dissatisfied by the aforesaid order passed by 3rd Jt. Civil Judge (S.D.), Rajkot and original plaintiff has filed Civil Misc. Appeal No.45 of 2000 before the 3rd Extra Assistant Judge, Rajkot. The learned Appellate Judge in his judgment and order dated 18th September, 2000 please to reject the said appeal.

6. Mr.K. S. Acharya, learned counsel for the

petitioner has tried to assail both the orders of the learned trial judge as well as appellate judge. The learned counsel for the petitioner has also stated that the Court below has seriously committed irregularities in passing the order and they ought to have suspended initiation of departmental enquiry on the same charge, criminal proceedings are also pending. Mr.K. S. Acharya, learned counsel for the petitioner has cited the judgment in the case of Tata Oil Mills Co. Ltd. v/s. The Workmen, reported in AIR 1965 S.C. 155, wherein the Hon'ble Supreme Court has observed in para-9 at page-160 are as under :-

"There is yet another point which remains to be considered. The Industrial Tribunal appears to have taken the view that since criminal proceedings had been started against Raghavan, the domestic enquiry should have been stayed pending the final disposal of the said criminal proceedings. As this Court has held in the Delhi Cloth and General Mills Ltd. v/s. Kaushal Bhan, 1960-3 SCR 227 : (AIR 1960 SC 806) it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal Court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character, because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal court. But to say that domestic enquiries may be stayed pending criminal trial is very different from anything(sic) that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or mala fide."

7. Mr.N. K. Majmoodar, learned counsel for the respondent has contended that in this case, there are serious misconduct like misappropriation of money so departmental enquiry was held and it depends upon written documentary evidence and though complaint is filed but standard proof of in criminal proceedings enquiry is different and even if the departmental enquiry is continued, no prejudice caused to the original plaintiff. The respondent - Board is perfectly justified the departmental enquiry. The learned counsel for the

respondents has also stated that if the injunction as prayed for is granted, defendant would suffer irreparable injury and it is like to cause demoralisation in the administration and balance of convenience and hardship is not caused to the appellant-plaintiff and appellant is not entitled to any injunction. The learned counsel for the respondent has submitted that original plaintiff has accepted money on behalf of respondent Board whatever consumer paid to him while in duplicate, he mentioned less amount than original receipt and thereby he has committed fraud. The learned counsel for the respondent has further stated that for completion of criminal trial, long time would be passed and when it is the admission of plaintiff that it will take long time for dismissal of criminal case and for such period the enquiry proceedings should not be stayed. Mr.N. K. Majmoodar, learned counsel for the opponents has relied upon the judgment of the Hon'ble Supreme Court in the case of State of Rajasthan v/s. B. K. Meena & Ors., reported in 1997 (2) ILLJ 136, wherein the Hon'ble Supreme Court has observed in para-14 at page-141 are as under :-

"It would be evident from the above decisions

that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that "the defence" of the employee in the criminal case may not be prejudiced". This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability' 'desirability' or 'propriety' as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. and Tata Oil Mills supra) is also not an invariable

rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanor is enquired into promptly. The Disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions

referred to above."

The learned counsel for the opponent has further relied upon the judgment of the Hon'ble Supreme Court in the case of Depot Manage, A.P.State Road Transport Corporation v/s. Mohd. Yousuf Miya and others, reported in (1997) 2 Supreme Court Cases 699, wherein the Hon'ble Supreme Court has observed in para-8 at page-704 are as under :-

"The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings as conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is

not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

The learned counsel for the opponents has further relied upon the judgment in the case of Capt. M. Paulanthony v/s. Bharat Gold Mines Ltd and Another, reported in (1999) 3 Supreme Court Cases 679, wherein it has been held in para-22 at page-691 are as under :-

"The conclusions which are deducible from various decisions of this Court referred to above are:

- (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
- (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the chargesheet in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
- (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee

on the basis of evidence and material collected against him during investigation or as reflected in the chargesheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

8. I have gone through the record of the case in this behalf, the orders of the Court below and submission made by the learned counsel for the petitioner as well as learned counsel for the respondent and also authorities cited by both the learned counsels in this behalf. In this case, original plaintiff is under suspension and proceedings of departmental enquiry for misappropriation of money of G.E.B. From the evidence on record, it transpires that in original receipt amount shown more while in duplicate receipt, amount shown less. Therefore, it is clear case of an evidence on record which is a civil nature which can be adjudicated properly in the departmental enquiry as charged of misappropriation of money. No doubt, criminal proceedings are initiated but standard proof and nature of evidence are quite a different and, therefore, the prayer of the plaintiff that the departmental enquiry should not be initiated till the criminal proceedings are over which cannot be accepted in this case. In fact, in this case, both the trial Court as well as Appellate Court have held against the plaintiff and rejected the interim injunction application for staying of departmental enquiry. The learned advocate for the original plaintiff failed to prove prima facie case as regards the balance of convenience is concerned there is charge of misappropriation and if the departmental enquiry is not held that will be not in the interest of the G.E.B. and if he continues the employment, he may have another chance for misappropriation of money. Therefore, the departmental enquiry as initiated from an



earlier date be completed as expeditiously as possible and if he is examined then only the plaintiff can be continued in service, subject to the order of the Criminal Court. In my view, therefore, this revision application is required to be rejected. I confirm the orders of trial Court as well as Appellate Court. I, therefore, dismissed this revision application. No order as to costs.

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(vrp)\*